UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

INDEX NO. 1:12-cv-01369-JG-VMS

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TODD BANK ,

Plaintiffs

vs.

INDEPENDENCE ENERGY GROUP, LLC
and INDEPENDENCE ENERGY ALLIANCE, LLC,

Defendants.

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DATE: FEBRUARY 13, 2015

TIME: 2:10 p.m.

Deposition of:

MICHAEL STARCK

called for oral examination by counsel for Plaintiff, pursuant to notice, held at the office of DUANE MORRIS, LLP, 30 South 17th Street, Philadelphia, Pennsylvania, before Terri L. Ochipinti, RPR, CCR, of Capital Reporting Company, a Notary Public in and for the Commonwealth of Pennsylvania.

A P P E A R A N C E S

On behalf of Plaintiffs:

TODD C. BANK, ESQUIRE
LAW OFFICE TODD C. BANK
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
718-520-7125

On behalf of Defendants:

DANA B. KLINGES, ESQUIRE
DUANE MORRIS, LLP
30 South 17th Street
Philadelphia, Pennsylvania 19103
215-979-1143

ALSO PRESENT: Kevin Potere, Esquire of Duane Morris
(Via telephone)

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was hired as someone who had experience in that area.

Q Did you ever learn of the results of that investigation?

A Just what is in here, yes.

Q And how did you learn about those results?

A Through conversations and through conversations with the team when we were having those conversations when we had the issue.

Q Was any inquiry made as to who made this phone call?

A Yes.

Q And who made that inquiry; did you or someone else?

A Mr. Caldwell.

Q But I'm saying did Independence Energy ask Mr. Caldwell to find that information out?

A Yes.

Q And did he?

A Yes.

Q And what did he -- what was that information?

A We found that there was a -- calls being placed by a gentleman by the name of Aaron

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Willemsky.

Q What else did you find out?

A That there was a company called Energy Sales Solutions that was making those phone calls.

Q And was that a company affiliated with Mr. Willemsky?

A To my knowledge, yes.

Q How so?

A I'm not sure how they're affiliated.

Q Did Independence Energy respond in any way to either this Energy Sales Solutions or Mr. Willemsky after this finding was made?

A Yes, they were investigated and terminated as independent associates for Independence Energy.

Q Which investigated?

A They were investigated and terminated. So the issue was investigated. As a result of that investigation, Mr. Willemsky was terminated as an independent associate for having broken the rules.

Q Who made the decision to terminate him?

A It was either Mr. Meiler or one of the other folks on that team. We -- it was basically a -- did not adhere to our policies. He was terminated.

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Q Were you told whether the only telephone -- the only prerecorded telephone call was made to me or do you know if there were others or what?

A I do not know if there were others.

Q Do you know if Mr. Caldwell provided that information to Independence Energy?

A I am not sure if he provided that information.

Q So is it fair to say that as far as you know, he might have been fired for making one prerecorded phone call?

MS. KLINGES: Objection to form.

THE WITNESS: Can you restate that?

BY MR. BANK:

Q Did you understand the question?

A No. Could you restate?

Q As far as you now, is it possible that Mr. Willemsky was fired for making only one prerecorded telephone call?

A I do not believe that anyone would believe that they made one prerecorded telephone call.

Q But --

A The individual was terminated for making

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robo calls in this case which is against policies and procedures.

Q Is it the calls themselves that are against the policy -- I'm sorry. Withdraw.

Is that prerecorded phone calls are against these policies and procedures or is that Mr. Willemsky was found that he didn't know me personally and, therefore, violated this warm market understanding?

A No, any sort of cold calling was prohibited without prior approval, and robo calling was absolutely prohibited.

Q Why was it prohibited?

A Because of the legal ramifications of doing robo calling.

Q Now, what was Mr. Willemsky or his company hired to do?

A Mr. Willemsky was an independent associate that was not hired. We did not hire. He was contracted. He was an independent associate that was on the sales team to sell retail electricity supplied to commercial and residential customers.

Q So was he authorized to promote goods and services that were provided by Independence Energy?

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A Retail electricity.

Q Okay. So is that a yes?

A Yes, retail electricity.

Q And was it found that Mr. Willemsky had made or had someone else make a pre -- a telephone call that played a prerecorded message either in full or in part?

A Yes.

Q And to me specifically?

A To my knowledge, yes.

Q And it's your belief or understanding that there were also other recipients of such phone calls; is that correct?

A I don't know that for sure.

Q But is that your belief?

MS. KLINGES: Objection. You can answer if you can.

THE WITNESS: I mean, from my belief perspective?

BY MR. BANK:

Q Yes.

A Yes.

Q Turning back to Page 8 of what's been marked as Exhibit Number 4 and looking at, again,